

Sec. 361.136. INDUSTRIAL SOLID WASTE AND HAZARDOUS WASTE MANAGEMENT FEE. (a) Except as provided by Subsections (e) through (i), a fee shall be imposed on the owner or operator of a waste storage, processing, or disposal facility for industrial solid waste and hazardous waste that is managed on site. This fee is in addition to any other fee that may be imposed under this chapter.

(b) The commission by rule shall establish fee rates for management of hazardous waste and commercial disposal of industrial solid waste, as well as the manner of collection, and shall revise the fee amounts as necessary.

(1) Fees under this section may apply only to the following:

(A) commercial and noncommercial storage, processing, or disposal of hazardous waste; or

(B) commercial disposal of Class I nonhazardous industrial solid waste.

(2) A fee established for the commercial disposal of a nonhazardous industrial solid waste shall not exceed 20 percent of the fee established for the disposal of a hazardous waste by the same method of disposal.

(3) A fee under this section shall not be assessed for the disposal of a waste subject to an assessment under Section 361.013.

(c) The waste management fee shall be based on the total weight or volume of a waste other than wastes that are disposed of in an underground injection well. The fee for those wastes shall be based on the dry weight of the waste.

(d) The waste management fee for wastes generated in this state may not exceed \$40 per ton for wastes that are landfilled. The commission by rule shall establish the amount of the fee for all other waste management methods at a lesser amount and shall base the amount on the factors specified in Section 361.139.

(e) A fee, which must be the same for wastes generated both in state and out of state and consistent with fees assessed for the management of other hazardous wastes, shall be established by the commission for the storage, processing, incineration, and disposal of hazardous waste fuels that the commission by rule shall define considering:

(1) Btu content;

(2) metals content;

(3) chlorinated hydrocarbon content; and

(4) the degree to which the waste fuel is used for energy recovery.

(f) A fee imposed on the owner or operator of a commercial industrial solid waste or hazardous waste storage, processing, or disposal facility, for wastes that are generated in this state and received from an affiliate or wholly-owned subsidiary of the commercial facility, or from a captured facility, shall be the same fee imposed on a noncommercial facility. For the purpose of this subsection, an affiliate of a commercial industrial solid waste or hazardous waste facility must have a controlling interest in common with that facility.

(g) A fee may not be imposed on the owner or operator of a waste storage, processing, or disposal facility for the storage of hazardous wastes for fewer than 90 days.

(h) A fee may not be imposed under this section on the operation of a facility permitted under Chapter 26, Water Code, or the federal National Pollutant Discharge Elimination System program for wastes treated, processed, or disposed of in a wastewater treatment system that discharges into surface water of the state.

(i) The storage, processing, or disposal of industrial solid wastes or hazardous wastes generated in a removal or remedial action accomplished through the expenditure of money from the hazardous and solid waste remediation fee account or generated in a removal or remedial action in this state conducted by the United States Environmental Protection Agency shall be exempt from the assessment of a waste management fee under this section.

(j) The owner or operator of a waste storage, processing, or disposal facility receiving industrial solid waste or hazardous waste from out-of-state generators shall be assessed a fee amount required on wastes generated in state plus an additional increment that the commission by rule shall establish. In establishing an incremental fee for out-of-state wastes, the commission shall consider:

- (1) factors specified by Section [361.139](#);
- (2) added costs to the state of regulating the interstate transport and subsequent management and disposal of imported industrial solid wastes and hazardous wastes and their associated risks;
- (3) similar fees that may be imposed in a generator's state of origin for the storage, processing, or disposal of hazardous waste; and
- (4) contributions in both fees and taxes paid by generators in this state to the support of the state's industrial solid waste and hazardous waste regulatory programs.

(k) A fee for industrial solid wastes or hazardous wastes that are legitimately reclaimed, reused, or recycled at a waste storage,

processing, or disposal facility must be the same for wastes generated in state and out of state.

(1) Fees collected under this section shall be credited as follows:

(1) 25 percent of the waste management fees collected from each commercial waste storage, processing, or disposal facility under this section shall be credited to the waste management account to be distributed to the county in which the facility is located to assist that county in defraying the costs associated with commercial industrial solid waste and hazardous waste management facilities; and

(2) of the remaining amount of the commercial waste management fees and of the total amount of the noncommercial waste management fees collected from each waste storage, processing, or disposal facility:

(A) 50 percent of each amount shall be credited to the hazardous and solid waste remediation fee account; and

(B) 50 percent of each amount shall be credited to the waste management account.

(m) Funds due an affected county under Subsection (1)(1) shall be paid by the commission not later than the 60th day after the receipt and verification of the payments from commercial facilities in the county.

(n) The commission by rule shall provide:

(1) for methods of computing the dry weight of industrial solid waste and hazardous waste; and

(2) for a method to determine or estimate the dry weight of small volumes of waste delivered to waste disposal facilities for which the costs of a dry weight analysis are disproportionate to the costs of disposal.

(o) A generator of industrial solid waste or hazardous waste shall provide to the operator of a land disposal facility certification of the computation of the dry weight of a waste to be disposed.

Added by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 24, eff. Sept. 6, 1990. Renumbered from Sec. 361.138 and amended by Acts 1991, 72nd Leg., ch. 710, Sec. 6, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 379, Sec. 5, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 333, Sec. 40, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 793, Sec. 2, eff. Sept. 1, 1997.